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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,283	09/08/2003	Timo W. Kipp	46505/3	1385
1912	7590	06/06/2005	EXAMINER	
AMSTER, ROTHSTEIN & EBENSTEIN LLP			LEE, DIANE I	
90 PARK AVENUE			ART UNIT	
NEW YORK, NY 10016			PAPER NUMBER	
			2876	

DATE MAILED: 06/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/657,283

Applicant(s)

KIPP ET AL.

Examiner

D. I. Lee

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5-8 is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 5/28/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

1. Claims 1-10 are presented for examination.

### ***Specification***

2. The abstract of the disclosure is objected to because of the followings:
    - (a) Line 2: "is comprised of" should be changed to --includes--;
    - (b) Line 9: "and also comprised of" should be changed to --also includes--;
- . Correction is required. See MPEP § 608.01(b).

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. **Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Re claim 4, line 2 reads, "*said antenna forms a magnetic configuration*". It is unclear what is "magnetic configuration" means. Applicant has not clearly defined the meaning of the magnetic configuration in the claim. For examining purpose, the above limitation has been translated as -- said antenna forms a predetermined configuration or shape --. Appropriate correction and/or clarification are required.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. **Claims 1 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Soehnlen [US 2002/0067264].**

Soehnlen discloses an apparatus for use in detecting tampering with a container sealed with a cap, comprising:

a radio frequency transceiver circuit 14 adapted to transmit a signal upon receipt of a transmit command (see paragraph 27);

an antenna 31 having a fixed length connected to said radio frequency transceiver circuit 14 (see paragraphs 27+ figure 3);

means for preventing said radio frequency transceiver circuit 14 (i.e., disabling the radio frequency transceiver circuit 14) from transmitting a signal when the container has been tampered with (i.e., when the integrity of the package has been a breached);

subsequent to the transmitting a transmit command by the interrogator 16 to said a radio frequency transceiver circuit 14, the interrogator identifies the tampering with the container by failure of the container to response to the transmit command (i.e., the interrogator recognizes the lack of response signal from the radio frequency transceiver circuit 14 when the integrity of the package has been a breached, see the abstract and paragraph 29).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. **Claims 1-4 and 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gustafson [US 6,050,622, cited by the applicant] in view of Soehnlén.** The teachings of Soehnlén have been discussed above.

**Re claims 1-3 and 9-10:** Gustafson discloses an apparatus for use in detecting tampering with a container (a bottle) sealed with a cap (a stopper 32), comprising:

a security seal (a the sealing strip 1) mounted over a substrate 10, 11, 12 having a first portion 12 thereof adapted to be affixed to a portion of the container (a neck portion of the bottle 33), and a second portion 10, 11) thereof adapted to be affixed the cap (the stopper 32) (see figures 1-3 for example);

a transceiver circuit (an electronic component 20 that is activated and interrogated by outside checking mean) adapted to transmit signal upon receipt of a transmit command (the

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electronic component 20 transmit its programmed code when the electronic component 20 is interrogated by an auxiliary transceiver apparatus, see the abstract; col. 3, lines 38+);

an antenna (a winding of coil 23 and its connection wires 22 that connects to the transceiver circuit 20) having a fixed length connected to the transceiver circuit 20 (see figures 1-3 for example) and mounted on the substrate (the sealing strip 1), adapted to be arranged so that a portion of the antenna (i.e., the connection wire 22) is mounted over the container (the neck portion of the bottle 33) and a portion of said antenna (i.e., the winding of coil 23) is mounted over the cap (the stopper 32) such that removal of the cap from the container will cause said antenna to separate thereby preventing said radio frequency transceiver from receiving any commands (i.e., when the cap 32 being withdrawn from the container neck 33 will cause the connection of the electronic component 20 and the coil 23 is broken, thus the electronic component 20 can no longer be interrogated, see col. 4, lines 48+, in other words, any attempt to tearing of the sealing strip 1, such as the cap 32 being withdrawn from the container neck 33, brings about breaking of the continuity of the safety circuit, hence the transceiver circuit 20 can no longer be interrogated since the connection wires 22 that connect the transceiver circuit 20 to the coil 23, see col. 4, lines 47+ and col. 5, lines 1+), wherein this means for preventing the transceiver circuit 20 from transmitting the signal when the container has been tampered with is used as identifying tampering with a container by the failure of the container to respond to said transmit command (the opening of the sealing strip 1 permits sure detection of the sealing which is supposed to have been violated, when upon interrogating this sealing no coded signal is received back, see col. 4, lines 47+).

Gustafson does not disclose the transceiver circuit is a radio frequency transceiver circuit.

Soehnlén discloses the radio frequency transceiver circuit (see the discussion above).

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It would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to incorporate the known RFID tag, as taught by Soehnlén, in the system of Gustafson, for its known advantages, such as high reading speed, low power consumption, cost low cost, its durability, and etc. (see paragraph 20+).

**Re claim 4:** wherein the substrate is positioned such that said antenna forms a magnetic configuration (see figures 3A-3C).

### ***Allowable Subject Matter***

10. Claims 5-8 are allowed.

11. The following is an examiner's statement of reasons for allowance:

The prior art of the record, fails to teach or fairly suggest the means for disabling the radio frequency transceiver when the sensor that mounted within the cap produces an output indicative of an amount of the substance within the container and wherein the output of the sensor indicates a change in the amount of the substance with the container, as set forth in the claims.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

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Baillod et al. [US 6,641,052, cited by the applicant] discloses an anti-tampering device that disables the connection of the RFID tag and the antenna when the cork from the bottle is removed.

Cooper et al. [US 4,813,564, cited by the applicant] discloses the disabling the network from the package when the package is opened.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. I. Lee whose telephone number is (571) 272-2399. The examiner can normally be reached on Monday through Thursday from 5:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee can be reached on (571) 272-2398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



D. I. Lee  
Primary Examiner  
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